



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenant: CNR CNR-MT
For the landlord: OPR-DR MNR-DR FFL

Introduction

This hearing was convened as a result of an Application for Dispute Resolution (application) by both parties seeking remedy under the *Residential Tenancy Act* (Act). The tenant applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (10 Day Notice) and for more time to make an application to cancel the 10 Day Notice. The filing fee was waived for the tenant.

The landlord applied for an order of possession for unpaid rent or utilities, for a money order for unpaid rent or utilities, and to recover the cost of the filing fee.

The tenant and the landlord and the spouse of the landlord, SN (spouse) attended the teleconference hearing. An opportunity was given to ask questions about the hearing process. Thereafter the parties gave affirmed testimony, were provided the opportunity to present their evidence orally and in documentary form prior to the hearing and make submissions to me. Words utilizing the singular shall also include the plural and vice versa where the context requires.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules). However, only the evidence relevant to the issues and findings in this matter are described in this decision.

As neither party raised any service issues, I find the parties were sufficiently served in accordance with the Act.

Preliminary and Procedural Matters

The parties confirmed their respective email addresses at the outset of the hearing and stated that they understood that the decision would be emailed to them.

In addition, at the outset of the hearing the parties confirmed that the tenant vacated the rental unit on March 3, 2022. As a result, I find the tenant's two applications are now moot and I dismiss both in full, without leave to reapply as the tenancy ended on March 3, 2022, when the tenant vacated the rental unit. I will therefore only deal with the landlord's application for the remainder of this decision. However, I note that the landlord does not require an order of possession so I will not be dealing with an order of possession as a result.

Issues to be Decided

- Is the landlord entitled to a monetary order under the Act and if so, in what amount?
- If yes, is the landlord entitled to the recovery of the cost of the filing fee under the Act?

Background and Evidence

A copy of the written tenancy agreement was submitted in evidence by the landlord. A fixed-term tenancy began on August 1, 2021 and was scheduled to convert to a month-to-month tenancy after July 31, 2022. Monthly rent in the amount of \$2,300.00 was due on the first day of each month. The tenant paid a security deposit of \$1,150.00 at the start of the tenancy, which the landlord continues to hold. The landlord requested to retain the tenant's security deposit during the hearing, towards any amount owing.

There is no dispute that the tenant vacated the rental unit on March 3, 2022. The tenant was served with the 10 Day Notice dated February 3, 2022, which had an effective vacancy date listed as February 18, 2022. The amount owing is listed as \$2,300.00 due February 1, 2022.

The tenant admitted during the hearing that they could not remember if February 2022 rent had been paid. The landlord testified that rent for February 2022 of \$2,300.00 remains owing. The landlord stated that for March 2022, new tenants were found for the last portion of March 2022 and that the landlord was able to minimize their loss by \$964.51, which was rent paid for the latter portion of March 2022. The landlord testified

that the tenants owes the balance of unpaid rent for March 2022, in the amount of \$1,335.49, which is \$2,300.00 less the mitigated amount of \$964.51. The landlord is also seeking the filing fee.

Analysis

Based on the documentary evidence and the undisputed testimony provided during the hearing, and on the balance of probabilities, I find the following.

I find the tenant breached section 26 of the Act that applies and states:

Rules about payment and non-payment of rent

26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

[emphasis added]

I find the tenant provided insufficient evidence that they paid rent for February 2022 and that the tenant has breached section 26 of the Act. As a result, I grant the landlord **\$2,300.00** as claimed for the unpaid rent for February 2022.

For March 2022 rent, I find that \$2,300.00 was owed as of March 1, 2022. I accept that the landlord was able to reduce their loss by securing new tenants and receiving \$964.51 from them for March 2022 rent. Therefore, I find the tenant is liable for the balance owing for unpaid rent for March 2022 in the amount of **\$1,335.49**.

As the landlord's claim had merit, I also grant the landlord **\$100.00** pursuant to section 72 of the Act for the recovery of the cost of the filing fee.

Based on the above, I find the landlord has established a total monetary claim of **\$3,735.49**, comprised of \$2,300.00 owing for February 2022 rent, \$1,335.49 owing for March 2022 rent, and the \$100.00 filing fee. Pursuant to section 38 of the Act, I authorize the landlord to retain the tenant's full security deposit of \$1,150.00, which has accrued \$0.00 in interest, in partial satisfaction of the landlord's monetary claim.

Pursuant to section 67 of the Act, I grant the landlord a monetary order for the balance owing by the tenant to the landlord in the amount of **\$2,585.49**.

I caution the tenant not to breach section 26 of the Act in the future.

Conclusion

The tenant's application is dismissed without leave to reapply, as the tenancy has ended which makes both of the tenant applications moot.

The landlord's application has merit and is successful.

The landlord has been authorized to retain the tenant's full security deposit of \$1,150.00 in partial satisfaction of the landlord's monetary claim of \$3,735.49 and is granted a monetary order for the balance owing by the tenant of \$2,585.49. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision will be emailed to both parties. The monetary order will be emailed to the landlord only for service on the tenant.

The tenant has been cautioned as noted above.

The tenant could be held liable for all costs related to the enforcement of the monetary order.

This decision is final and binding on the parties, unless otherwise provided under the Act, and is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: April 29, 2022

Residential Tenancy Branch